

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

TO: Chief Clerk DATE: April 23, 2012

THRU: Iliana Delgado, Team Leader
Water Rights Permitting Team

FROM: Craig Mikes, Project Manager
Water Rights Permitting Team

SUBJECT: Bentwood C.C., L.L.C.
Docket #2011-2287-WR
ADJ 1313
CN603932765, RN102704277
Application No. 14-1313A to Amend Certificate of Adjudication No. 14-1313
Texas Water Code §11.122
Lake Nasworthy, South Concho River, Colorado River Basin
Tom Green County

The Executive Director received an application from the Bentwood C.C., L.L.C. seeking to amend Certificate of Adjudication No. 14-1313 pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

The application was received on August 13, 2010. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 26, 2011. The notice of the application was filed with the Chief Clerk on October 3, 2011, and notice was subsequently mailed to the interjacent water right holders in the Colorado River Basin. A request for a contested case hearing was received.

Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on the analysis in the technical review memos.

Below is the caption for this application:

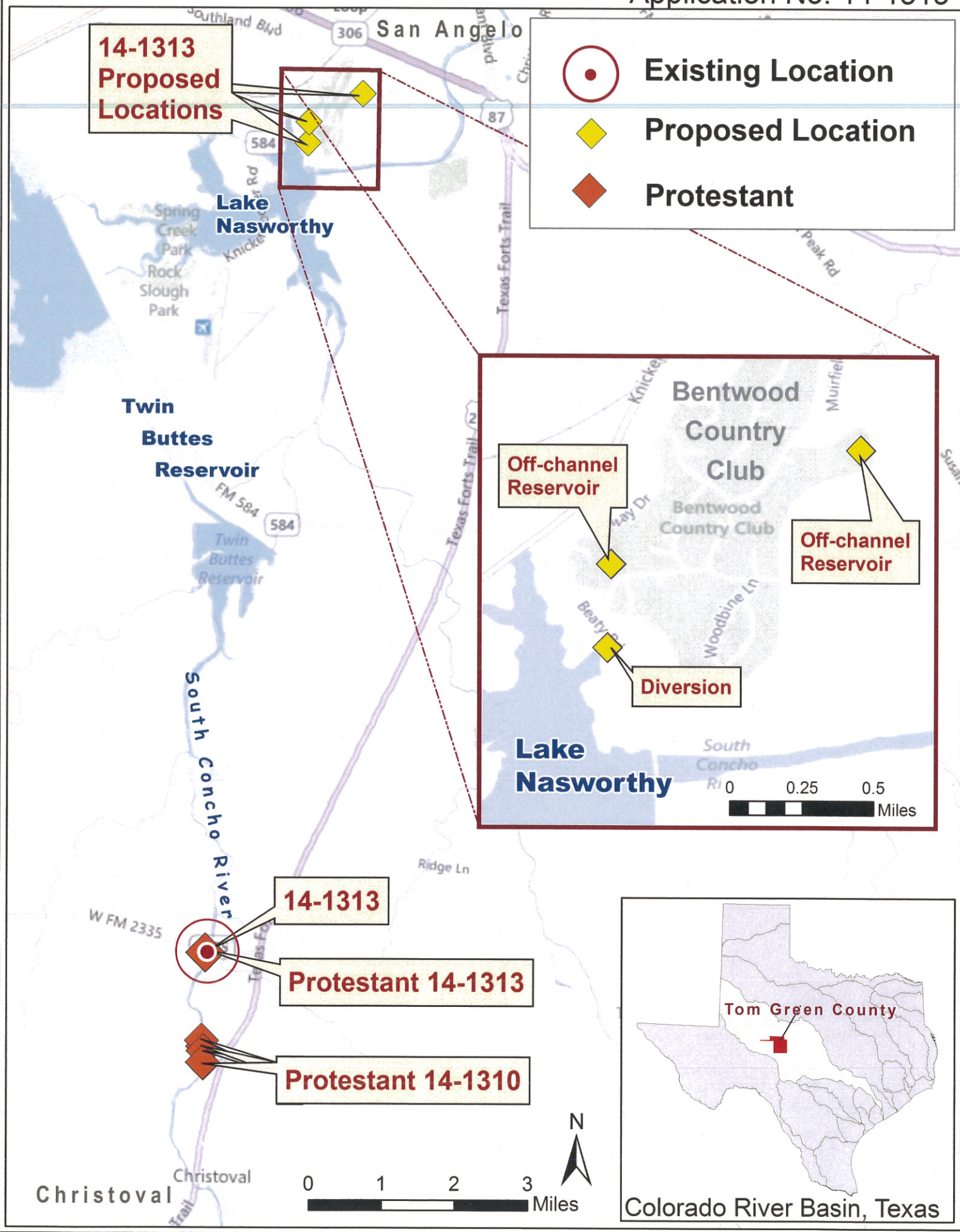
Consideration of the application by **Bentwood C.C., L.L.C.** for an amendment to Certificate of Adjudication No. 14-1313 (Amendment 14-1313A) to add a diversion point on the South Concho River, to divert its portion of water authorized by Certificate of Adjudication 14-1313 for storage in two off-channel reservoirs, and to add an additional

250 acres of irrigated land in **Tom Green County**. Existing Certificate of Adjudication No. 14-1313 authorizes Treadwell Cattle Company, Ltd., Kent C. Schwartz, and Bentwood C.C., L.L.C to divert and use not to exceed a combined 692 acre-feet of water from a point on the South Concho River for irrigation of 250 acres in Tom Green County. The Commission will also consider requests for hearing or reconsideration, related responses and replies, and public comment. (James Aldredge, Craig Mikes)

Craig Mikes, Project Manager
Water Rights Permitting Team

Enclosure

cc: Kellye Rila, TCEQ
Kathy Alexander, TCEQ
Ron Ellis, TCEQ
James Aldredge, TCEQ
Iliana Delgado, TCEQ
Stephen Densmore, TCEQ
Chris Loft, TCEQ
Scott Swanson, TCEQ
Leonard Oliver, TCEQ
George Gable, TCEQ



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF WATER RIGHTS APPLICATION TO AMEND A CERTIFICATE OF ADJUDICATION

APPLICATION NO. 14-1313A

Bentwood C.C., L.L.C. seeks to amend its portion of Certificate of Adjudication No. 14-1313 to add recreation use, to change its diversion point to a point on Lake Nasworthy, located on the South Concho River, Colorado River Basin, to add two off-channel reservoirs as part of the irrigation system, and to change the place of use to a 419.643-acre tract in Tom Green County. The Applicant does not seek to increase the diversion rate. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Bentwood C.C., L.L.C., 2111 Clubhouse Lane, San Angelo, Texas, 76904, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to Texas Water Code (TWC) §11.122, and Texas Commission on Environmental Quality Rules Title 30 Texas Administrative Code (TAC) §295.1, *et seq.* Certified mailed notice is required to the 151 interjacent water right holders of record in the Colorado River Basin pursuant to Title 30 TAC §295.158(c)(2)(E) which includes the co-owners of the Certificate pursuant to Title 30 TAC §295.158(c)(2)(C).

Certificate of Adjudication No. 14-1313, issued March 12, 1980, authorized the owner to divert and use not to exceed 692 acre-feet of water per year at a maximum rate of 3.16 cfs (1,420 gpm) from a point on the South Concho River for agricultural purposes to irrigate 250 acres of land out of a tract in Tom Green County. The time priority of this right is June 19, 1914.

Bentwood C.C., L.L.C. acquired a portion of the Certificate, being 320 acre-feet of water per year. The Applicant only acquired the water and not the land to which it was appurtenant.

The Applicant seeks to amend its portion of Certificate of Adjudication No. 14-1313 to add recreation use, change its diversion point to a point on Lake Nasworthy, South Concho River, add two off-channel reservoirs as part of the irrigation system, and change the place of use to irrigate 250 acres out of a 419.643-acre tract in Tom Green County. The Applicant does not seek to increase the diversion rate.

Lake Nasworthy is owned by the City of San Angelo, authorized by Certificate of Adjudication No. 14-1319. The City has consented to Bentwood C.C., L.L.C. diverting from Lake Nasworthy.

The proposed off-channel reservoirs are described as follows:

- The South Golf Course Lake has a capacity of 2.8 acre-feet with a surface area of 1.3 acres and is located at Latitude 31.398214° N, Longitude 100.480183° W, in the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, bearing S 19.003333° E, 6,230 feet

from the northwest corner of the Gantz Original Survey, approximately 5.3 miles southwest of the City of San Angelo, Tom Green County, Texas.

- The North Golf Course Lake has a capacity of 4.0 acre-feet with a surface area of 0.9 acres and is located at Latitude 31.403699° N, Longitude 100.467411° W, in the Gantz Original Survey, bearing N 30.000278° E, 6,300 feet from the southeast corner of the Gantz Original Survey, approximately 4.36 miles southwest of the City of San Angelo, Tom Green County, Texas.

The proposed diversion point is located on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, bearing S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas. The Zip Code for the proposed diversion point and off-channel reservoirs is 76904.

Ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905.

The application and required fees were received on August 13, 2010. Additional information and fees were received on April 25, June 27, July 5, July 7, and July 11, July 27, and August 8, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 26, 2011.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, a requirement that there be inflows to Lake Nasworthy prior to diversion. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by October 27, 2011. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by October 27, 2011. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.state.tx.us/about/comments.html>. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: October 10, 2011

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DRAFT

AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-1313A

TYPE: 11.122

Owner:	Bentwood C.C., L.L.C.	Address:	2111 Clubhouse Lane San Angelo, Texas 76904
Filed:	July 26, 2011	Granted:	
Purpose:	Recreation and Agricultural	County:	Tom Green
Watercourse:	the South Concho River, tributary of the Concho River, tributary of the Colorado River	Watershed:	Colorado River Basin

WHEREAS, Certificate of Adjudication No. 14-1313, issued March 12, 1980, authorized the owner to divert and use not to exceed 692 acre-feet of water per year at a maximum rate of 3.16 cfs (1,420 gpm) from a point on the South Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin, for agricultural purposes to irrigate 250 acres of land out of a tract in Tom Green County, with a time priority of June 19, 1914; and

WHEREAS, Bentwood C.C., L.L.C. (Applicant) acquired a portion of the Certificate, being 320 acre-feet of water per year, and acquired only the water and not the land to which it was appurtenant; and

WHEREAS, the Applicant seeks to amend its portion of Certificate of Adjudication No. 14-1313 to add recreation use, change its diversion point to a point on Lake Nasworthy, South Concho River, add two off-channel reservoirs as part of the irrigation system, and change the place of use to irrigate 250 acres out of a 419.643-acre tract in Tom Green County, but does not seek to increase the diversion rate; and

WHEREAS, Lake Nasworthy is owned by the City of San Angelo, authorized by Certificate of Adjudication No. 14-1319. The City has consented to Bentwood C.C., L.L.C. diverting from Lake Nasworthy; and

WHEREAS, the proposed off-channel reservoirs are described as follows:

- The South Golf Course Lake has a capacity of 2.8 acre-feet with a surface area of 1.3 acres and is located at Latitude 31.398214° N, Longitude 100.480183° W, in the

Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, bearing S 19.003333° E, 6,230 feet from the northwest corner of the Gantz Original Survey, approximately 5.3 miles southwest of the City of San Angelo, Tom Green County, Texas.

- The North Golf Course Lake has a capacity of 4.0 acre-feet with a surface area of 0.9 acres and is located at Latitude 31.403699° N, Longitude 100.467411° W, in the Gantz Original Survey, bearing N 30.000278° E, 6,300 feet from the southeast corner of the Gantz Original Survey, approximately 4.36 miles southwest of the City of San Angelo, Tom Green County, Texas; and

WHEREAS, the proposed diversion point is located on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, bearing S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas; and

WHEREAS, ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the Concho Watermaster; and

WHEREAS, the Executive Director recommends that special conditions be included; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 14-1313, designated Certificate of Adjudication No. 14-1313A, is issued to Bentwood C.C., L.L.C., subject to the following terms and conditions:

1. USE

In lieu of its previous authorizations to divert and use not to exceed 320 acre-feet of water from a point on the South Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin, for agricultural purposes to irrigate 250 acres of land out of a tract in Tom Green County, Owner is now authorized to divert not to exceed 320 acre-feet of water from Lake Nasworthy, on the South Concho River, for storage in two off-channel reservoirs (South and North Golf Course Lakes) for recreation purposes and subsequent diversion and use for agricultural purposes to irrigate 250 acres out of a 419.643-acre tract in Tom Green County.

Ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905.

2. DIVERSION

- A. In lieu of Paragraph 2.A. DIVERSION, Owner is now authorized to divert water from a point on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, bearing S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas.
- B. The maximum combined diversion rate is 3.16 cfs (1,420 gpm).

3. PRIORITY DATE

The time priority for the right to divert and use the 320 acre-feet of water per year from the diversion point authorized by this amendment is June 19, 1914, except that it is junior in priority to the interjacent water right holders of record between the existing diversion point and the diversion point authorized by this amendment as they existed on the filing date of this amendment, July 26, 2011.

4. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

5. SPECIAL CONDITIONS

- A. Owner shall only divert the 320 acre-feet of water per year at the downstream diversion point authorized by this amendment when there are inflows to Lake Nasworthy. This amendment does not authorize the diversion of stored water from Lake Nasworthy.
- B. Owner shall divert at the downstream diversion point authorized by this amendment only that portion of the 320 acre-feet of water that would have been available at the existing upstream diversion point as determined by the Watermaster.
- C. Owner shall contact the Concho Watermaster prior to diversion of water authorized by this amendment.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the Certificate of Adjudication by the owner or seller at the time of the transaction.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate No. 14-1313, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Colorado River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State resources exercised by the Commission.

Date Issued:

For the Commission

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Craig Mikes, Project Manager
Water Rights Permitting Team
Water Supply Division

Date: August 25, 2011

Thru: *CL*
8/25/11 Chris Loft, Team Leader
Resource Protection Team
Water Supply Division

KW
8/25/11 Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team
Water Supply Division

From: *ESS*
8/25/11 E. Scott Swanson, Senior Water Conservation Specialist
Resource Protection Team
Water Supply Division

Subject: Bentwood C.C., L.L.C.
ADJ 1313
CN603932765
Application No. 14-1313A to Amend Certificate of Adjudication No. 14-1313
Water Conservation Review

Certificate of Adjudication No. 14-1313 authorizes owners to divert and use not to exceed 692 acre-feet of water per year, with a priority date of June 19, 1914, from a point on the South Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin, at a combined maximum diversion rate of 3.16 cfs (1,420 gpm) for agricultural purposes to irrigate 250 acres of land out of as tract located in Tom Green County.

Bentwood C.C., L.L.C. has acquired a portion of Certificate No. 14-1313, being 320 acre-feet of water. Bentwood only acquired the water and not the land to which it was appurtenant.

Applicant seeks to amend Certificate No. 14-1313 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert their water for storage into two off-channel reservoirs and subsequent diversion for agricultural (irrigation) and recreation purposes. Applicant also seeks to add an additional place of use in Tom Green County.

Per Title 30 TAC Ch. 295.9 (4)(C), an application to change the place of use of the appropriation requires the submittal of a water conservation plan.

The water conservation plan for Bentwood C.C., L.L.C. was reviewed by TCEQ staff and found to be administratively complete per Title 30 TAC Ch. 288.4.

The application is consistent with the approved January 2011 Region K Water Plan and the approved 2007 State Water Plan because there is nothing in the plans that conflicts with issuing this amendment.

The following water conservation language should be included in the amendment:

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Craig Mikes, Project Manager
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Date: August 31, 2011

Through: *KX* Kathy Alexander, Technical Specialist
Water Rights Permitting & Availability Section

SD Stephen Densmore, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Leonard Oliver, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Bentwood C.C., L.L.C.
ADJ1313
CN603932765
Concho, Colorado River Basin
Tom Green County

WATER AVAILABILITY REVIEW

Application Summary

Bentwood C.C., L.L.C. (Bentwood) acquired a portion of Certificate 14-1313, authorizing the diversion and use of 320 acre-feet of water per year from a point on the South Concho River, tributary of the Colorado River, Colorado River Basin, at a combined diversion rate of 3.16 cfs (1,420 gpm) for agricultural (irrigation) purposes. Bentwood did not acquire the land to which the water was appurtenant.

The Applicant seeks to amend Certificate 14-1313 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, and to divert their water for storage in two off-channel reservoirs for subsequent diversion for agricultural (irrigation) purposes. The applicant also seeks to add a tract of land in Tom Green County as a place of use.

The application was declared administratively complete on June 26, 2011.

No Injury Analysis

The requests to add an additional place of use and storage of the water in off-channel reservoirs do not require water availability analyses because these are not requests for a new appropriation of water. These requests also do not affect other water right holders because the amount of water diverted from the stream will not change.

The request for the addition of a downstream diversion point does not require a water availability analysis because the application does not request a new appropriation of water. However, the application must be reviewed to ensure that no water rights are affected by the requested change in diversion point. Resource Protection staff did not recommend an instream flow requirement for the application.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocations. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas' river basins that include geographical information, water right information, naturalized flows, evaporation rates, and specific management assumptions. Hydrology staff utilizes WRAP to evaluate water rights applications to determine water availability and to ensure that senior water rights are protected

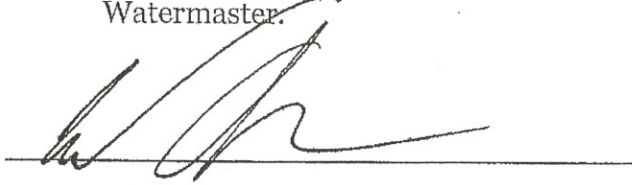
Staff modeled the application using the Full Authorization simulation of the Colorado River WAM. The period of record for the Colorado WAM is 1940 to 1998. Staff compared the pre- and post- application volume reliabilities of basin water rights and found that seven water rights were negatively affected as a result of this application, although the impact was minimal. The average impact was 0.06 percent. Staff believes this application does not constitute an impact on other basin water rights, because pursuant to 30 TAC §297.45, the amendment is subordinate to interjacent water rights. In addition, any amendment granted will be included in the City of San Angelo Water Rights Accounting Plan to ensure that stored water will not be taken, additional special conditions are included, and diversions will be subject to the requirements and orders of the Concho Watermaster. These special conditions should mitigate any impacts on other water rights, should any be determined to exist.

Conclusion

Staff can recommend granting the application if the amendment contains the following special conditions. Note the amendment is subject to the requirements and orders of the Concho Water Master.

1. Owner shall only divert the 320 acre-feet of water per year at the downstream diversion point authorized by this amendment when there are inflows to Lake Nasworthy. This amendment does not authorize the diversion of stored water from Lake Nasworthy.

2. Owner shall only divert at the downstream diversion point authorized by this amendment that portion of the 320 acre-feet of water that would have been available at the existing upstream diversion point as determined by the Watermaster.

A handwritten signature in black ink, appearing to read 'Leonard Oliver', is written over a horizontal line.

Leonard Oliver, Hydrologist

HYDROLOGY UNIT ANALYSIS FACT SHEET

Applicant: Bentwood C.C., L.L.C. Basin: Colorado River Basin
Water Right: 14-1313 County: Tom Green
Stream: Colorado River Drainage Area: 2657.319 sq. miles
Requested Amount: 320 acft

Changes to RUN 3 :

Changes to *.DAT file:

**KENT C SCHWARTZ & TREADWELL CATTLE CO., LTD.

**WRC20620 692.0 IRR-C19140619

61401313001 6140131361313001

WRC20620 372.0 IRR-C19140619

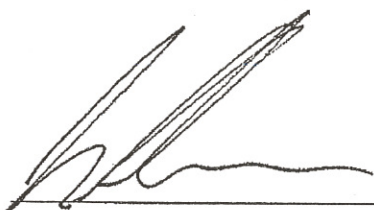
61401313001 6140131361313001

** Bentwood

WRC20260 320.0 IRR-C19140619

61401313002 6140131361313002

Remarks: Resource Protection Staff did not recommend streamflow restrictions for this application.



Leonard Oliver, Hydrologist

8/31/2011

Date

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Craig Mikes, Project Manager
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Date: August 25, 2011

Through: *CL* Chris Loft, Team Leader
8/25/11 Resource Protection Team
Water Rights Permitting & Availability Section

66
8/25/11 Gregg Easley, Aquatic Scientist
Resource Protection Team
Water Rights Permitting & Availability Section

From: *GWG*
8/25/11 George Gable, Aquatic Scientist
Resource Protection Team
Water Rights Permitting & Availability Section

Subject: Bentwood C.C., L.L.C.
ADJ1313
CN603932765
Application No. 14-1313A to amend Certificate of Adjudication No. 14-1313
Lake Nasworthy, Colorado River Basin
Tom Green County

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include title 30 Texas Administrative Code §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed.

ENVIRONMENTAL ANALYSIS

Application Summary: Certificate of Adjudication No. 14-1313 authorizes the owners to divert and use not to exceed 692 acre-feet of water per year, with a priority date of June 19, 1914, from a point on the South Concho River, tributary of the Colorado River, Colorado River Basin, at a combined diversion rate of 3.16 cfs (1,420 gpm) for agricultural purposes to irrigate 250 acres of land in Tom Green County.

Bentwood C.C., L.L.C. (Applicant) acquired a portion of Certificate No. 14-1313, being 320 acre-feet of water and not the land appurtenant. The Applicant seeks to amend Certificate No. 14-1313 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert their water for storage in two off channel

reservoirs and subsequently divert for irrigation and recreation purposes on an additional tract of land located in Tom Green County.

INSTREAM USES

Aquatic and Riparian Habitats: According to the *Handbook of Texas Online* the South Concho River rises one-half mile east of U.S. Highway 277 in central Schleicher County and flows north thirty-six miles through Twin Buttes Reservoir and Lake Nasworthy to its confluence with the North Concho River. Lake Nasworthy is relatively shallow with a surface area of 1,380 acres and a storage capacity of 10,108 acre-feet at a normal pool elevation of 1872.2 feet MSL (TPWD 2011 and TWDB 2003).

The South Concho River and Lake Nasworthy are located in the Red Prairie ecoregion of the Central Great Plains and Semiarid Edwards Plateau ecoregion of the Edwards Plateau. Soils are dark and calcareous stony clays and loams, dark brown to red-brown calcareous sandy clays and loams, and red-brown to gray-brown sandy and clay loams, caliche beds, and exposed Cretaceous limestone and Permian sedimentary rocks. Vegetation types identified in these ecoregions include: water-tolerant hardwoods, *Prosopis glandulosa*, *Hilaria belangeri*, *Juniperus ashei*, *Quercus fusiformis*, *Zizyphus obtusifolia*, *Agave lechuguilla*, *Dasylirion* spp., *Juniperus pinchotii*, *Schizachyrium scoparium*, *Nassella leucotricha*, *Tridens albescens*, *Eriochloa sericea*, and *Bouteloua curtipendula* (*Handbook of Texas Online* and Griffith et al. 2004).

The South Concho River supports 89 indigenous and eight introduced fish species (TSU 2010). Studies on the South Concho River identified 16 species fish including: *Camptostoma anomalum*, *Cyprinella venusta*, *Dionda argentosa*, *Etheostoma lepidum*, *E. spectabile*, *Gambusia affinis*, *Ictalurus punctatus*, *Lepomis auritus*, *L. gulosus*, *L. macrochirus*, *L. megalotis*, *L. microlophus*, *Micropterus punctulatus*, *M. salmoides*, *M. treculi*, and *Notropis amabilis* (Hoeinghaus et al. 2006). Lake Nasworthy provides habitat for numerous species of fish with *Dorosoma cepedianum*, *Morone* spp., *Ictalurus punctatus*, *Cyprinus carpio*, *Carpiodes carpio*, *Lepisosteus osseus*, *Lepomis macrochirus*, *L. megalotis*, and *Micropterus salmoides* being dominant (TPWD 2006). According to the Texas Parks and Wildlife's *Annotated List of Rare Species* there are four state threatened invertebrate species with potential or known presence in Tom Green County: the false spike mussel (*Quadrula mitchelli*), Texas fatmucket (*Lampsilis bracteata*), Texas fawnsfoot (*Truncilla macrodon*), and Texas.

The applicant has acquired a portion Certificate No. 14-1313 and seeks a downstream diversion point move and is not requesting a new appropriation of state water; therefore, the proposed diversion of 320 acre-feet of water per year should not adversely impact aquatic and riparian habitats in Lake Nasworthy or the South Concho River downstream of the applicant's proposed diversion point. To minimize the entrainment or impingement of aquatic organisms, the applicant has indicated that screens with a mesh size of less than 0.25 inches and a pump with a flow-through velocity less than 0.5 feet per second currently exist for use by the applicant.

Recreational Uses: According to the Texas Parks and Wildlife Department, activities available at Lake Nasworthy include picnicking, nature study, fishing, boating, water skiing, swimming, wildlife observation, and camping (TPWD 2009). According to *An Analysis of Texas Waterways* (TPWD 1979), when Lake Nasworthy Dam is releasing water, the South Concho River is suitable for recreational use from the dam to Bell Street City Park in San Angelo, where it joins the North Fork and forms the main Concho River. The proposed diversion of 320 acre-feet of water per year should not adversely affect recreational uses in Lake Nasworthy or the South Concho River downstream of the applicants proposed diversion point.

Water Quality: Based on the *Atlas of Texas Surface Waters* (TCEQ 2004), Lake Nasworthy is designated as Segment No. 1422. According to the *Texas Surface Water Quality Standards* (TCEQ 2010), designated uses for Segment No. 1422 include primary contact recreation, high aquatic life use, and public water supply. According to the *Texas Water Quality Inventory and 303(d) List* (TCEQ 2008), all uses are fully supported for Segment No. 1422. The proposed diversion of 320 acre-feet of water per year should not adversely affect water quality in Lake Nasworthy or the South Concho River downstream of the applicant's proposed diversion point.

Bay and Estuary Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located greater than 200 river miles from the Gulf of Mexico. As an individual event, the proposed addition of a downstream diversion point should have minimal impact on bay and estuary freshwater inflow. However, the cumulative effects of all diversions and impoundments in the Colorado River Basin and its receiving waters of Matagorda Bay and the Gulf of Mexico are unknown at this time.

SUMMARY

Certificate of Adjudication No. 14-1313 authorizes the owners to divert and use not to exceed 692 acre-feet of water per year, with a priority date of June 19, 1914, from a point on the South Concho River, tributary of the Colorado River, Colorado River Basin, at a combined diversion rate of 3.16 cfs (1,420 gpm) for agricultural purposes to irrigate 250 acres of land in Tom Green County.

Bentwood C.C., L.L.C. (Applicant) acquired a portion of Certificate No. 14-1313, being 320 acre-feet of water, and not the land appurtenant. The Applicant seeks to amend Certificate No. 14-1313 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert their water for storage in an off channel reservoir and subsequently divert for irrigation and recreation purposes.

Resource Protection staff has no recommendations for this amendment.

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas

Commission on Environmental Quality, and other applicable State and Federal authorizations.

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CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 14-1313

OWNER: Laura P. Shaw
P. O. Box 263
Christoval, Texas 76935

COUNTY: Tom Green

PRIORITY DATE: June 19, 1914

WATERCOURSE: South Concho River

BASIN: Colorado River

WHEREAS, by final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, a right was recognized under Certified Filing 337 authorizing Laura P. Shaw to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Colorado River Basin is issued to Laura P. Shaw, subject to the following terms and conditions:

1. USE

Owner is authorized to divert and use not to exceed 692 acre-feet of water per annum from the South Concho River to irrigate a maximum of 250 acres of land out of a tract located in the C. Schmidt Surveys 893 and 892, Abstracts 1901 and 1902, and the F. Schmidt Surveys 891 and 890, Abstracts 1898 and 1897, Tom Green County, Texas, said tract of land being described as follows:

- (1) BEGINNING at a point on the West bank of the South Concho River, said point being where the North right-of-way of Farm to Market Road 2335 intercepts the West bank of the South Concho River;
- (2) THENCE N 82° 30' W, 2262.5 feet with the North ROW of said FM 2335;
- (3) THENCE N 80° W, 705.2 feet with the said ROW to a point;
- (4) THENCE N 12° W, 5406.5 feet to a point on the North line of the F. Schmidt Survey 890, Abstract 1897;
- (5) THENCE E, 5171.5 feet with said North line to a point on the West bank of the South Concho River;
- (6) THENCE upstream with the meanders of the South Concho River to the place of beginning.

2. DIVERSION

A. Location:

At a point on the west bank of the South Concho River which is S 25° W, 425 feet from the northeast corner of the F. V. Westenbustel Survey 894, Abstract 3976, Tom Green County, Texas.

B. Rate:

Maximum Diversion Rate: 3.16 cfs (1420 gpm).

3. PRIORITY

The time priority of owner's right is June 19, 1914.

The locations of pertinent features related to this certificate are shown on Page 11 of the Concho River Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions provided for in the final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the above-described land includes, unless otherwise specified, the portion of the water right which is appurtenant to the land transferred.

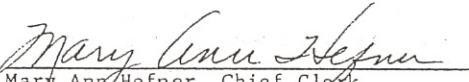
TEXAS WATER COMMISSION


Felix McDonald, Chairman

DATE ISSUED:

March 12, 1980

ATTEST:


Mary Ann Hefner, Chief Clerk